IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2861 of 2000
with
SPECIAL CIVIL APPLICATION Nos. 2960 TO 2964 of 2000
with
SPECIAL CIVIL APPLICATION Nos. 3475 and 3476 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANIBEN WD/O BHALABHAI @ BHALAJIBHAI BECHARBHAI SOLANKI
Versus
STATE OF GUJARAT

Appearance:
MS LILU K BHAYA for Petitioners
MS NANDINI JOSHI, AGP for Respondent No. 1
MR PRASHANT G DESAI for Respondent No. 2
DS AFF.NOT FILED (N) for Respondent No. 3
MS BANNA S DUTTA for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/07/2001 & 19/07/2001

COMMON ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, with the consent of the learned counsel for the parties, these petitions are taken up for final disposal today.

2. In this group of petitions, the petitioners, eight in number, have challenged the eviction notices issued by the respondent Corporation under the provisions of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the Act" or "the Town Planning Act"). The petitioners claim to be the tenants residing in the premises of plot belonging to respondent No.3-Ramnagar Co-operative Housing Society Ltd. for the last more than 50 years. The Ahmedabad Municipal Corporation gave notices dated 7.7.1997 to the petitioners informing them that under Town Planning Scheme No. 30, the land on which the petitioners' hutments stand has been given Final Plot No. 216 and that the petitioners are, therefore, liable to hand over possession of the land to the Corporation as the petitioners are occupying a part of the land bearing Final Plot No. 216 in the above Town Planning Scheme. The petitioners were called upon by the respondent Corporation to produce either survey slip or identity card or other acceptable proof to show that the petitioners were residing in the hutments in question for residential purpose prior to the year 1976. After giving the petitioners an opportunity to prdouce the documents in March, 2000, the respondent-Corporation took the impugned decision that in view of the petitioners' failure to show that they have been residing on the land in question prior to 1976, the petitioners' request for alternative site/accommodation cannot be considered. The petitioners have challenged the eviction notice on the ground that the petitioners are the tenants of respondent No.3-society in respect of the land in question and that in view of the said status, the Town Planning Scheme is illegal as the right of the petitioners as tenants is sought to be taken away without giving the petitioners any notice as required by the Town Planning Act and the Rules under which the petitioners are entitled to get a notice and an opportunity of being heard before the land could be vested in any other person.

3. The petitions are opposed. The Estate Officer of the respondent-Corporation has filed affidavit dated 9.8.2000 in Special Civil Application No. 2960 of 2000 stating as under :-

(i) The petitioners have made encroachment on the land in question. As per the Town Planning

Scheme, the Corporation was required to hand over the possession of the original plot No. 120 (occupied by the petitioner) to the owner of the original plot No. 119 which is numbered as Final Plot No. 217. Original plot No. 120 is renumbered as Final Plot No. 216 in the Town Planning Scheme. As per the said Town Planning Scheme, the land bearing original plot No. 120 (Final Plot No. 216) is vested in Indira Gandhi Park Cooperative Society Ltd. in lieu of their original plots. Hence, the Corporation had issued notices under Section 68 read with Rule 33 of the Act and the Rules in the year 1982. Inspite of the notices, the petitioners did not vacate. Therefore, the concerned officer of the respondent-corporation alongwith the police authority had gone to the site for the purpose of getting the land vacated on 13.5.1999, but because the petitioners and others resorted to violence, the officers could not get possession of the land in question from the petitioners.

(ii) As per the Town Planning Scheme, respondent No. 4 is entitled to get the possession of Final Plot No. 216 in the Town Planning Scheme (Original Plot No. 120) in lieu of the land bearing Original Plot No. 119 which is renumbered as Final Plot No. 217.

(iii) The respondent Corporation had carried out the survey of the encroachments made before 1.5.1976. The Corporation offered alternative accommodation to those who produced the documentary evidence before the Corporation to show that they are residing at the site prior to 1976. The petitioners have not produced any single documentary evidence to show that they are residing at the site in question prior to 1976. Hence, the Corporation is not bound to offer them any alternative accommodation. Nine person who produced such evidence has been given accommodation.

(iv) The scheme prepared and submitted by the Ahmedabad Municipal Corporation has been sanctioned by the Hon'ble Supreme Court in the case of Nawabkhan Pathan. Hence, also the petitioners are not entitled to challenge the scheme which was sanctioned about 25 years back.

Reliance is also placed on the decision of a

Division Bench of this Court in the case of Peoples Union for Civil Liberties vs. State of Gujarat, 2001(1) GLR 547.

4. Affidavit in reply is also filed on behalf of respondent No. 4. Respondent No. 4 has supported the Corporation.

5. It appears that the only ground on which the petitioners have challenged the eviction notices is that the petitioners being the tenants in respect of the land in question, the Town Planning Scheme could not have been sanctioned without giving the petitioners an opportunity of being heard to show that they are the tenants in respect of the land in question. The only documents in support of their claim for tenancy are the alleged rent receipts purported to have been issued by the Chairman/Secretary/Treasure of respondent No. 3-Ramnagar Cooperative Housing Society Ltd. However, respondent No.3-society, though served, has chosen not to appear before the Court nor is there anything on record to show that respondent No. 3-society had any title to the land in question. It is, therefore, not possible to accept the petitioners' case that on the date when the draft Town Planning Scheme was published, the petitioners had any tenancy rights in respect of the land in question. Hence, the petitioners have no case on the merits of the legal contentions as raised by them.

6. However, the question remains whether the petitioners are entitled to any alternative accommodation. The policy of the respondent Corporation is to give alternative accommodation to those who were found to be in possession of the concerned lands prior to 1.5.1976. The petitioners are, therefore, relying on some documents such as rent receipts for contending that even if they had no legal tenancy rights, they were at least in unauthorised occupation of the land in question. The respondent Corporation has, however, not accepted this evidence as sufficient for accepting the petitioners' case that they were occupying the land in question prior to 1.5.1976. Petitioner in Special Civil Application No. 2861 of 2000 - Dhaniben B. Solanki has, however, produced a xerox copy of the ration card wherein the names of the late husband of the petitioner, the petitioner, and their children are mentioned and the address given is Ramnagar Society, Kalapinagar, Ahmedabad. That ration card appears to have been issued in 1976. It, therefore, appears that when this petitioner had produced independent evidence of a ration card which has not been doubted by the respondent

Corporation, the Corporation should have atleast taken the independent evidence of ration card into consideration while deciding the question whether the petitioner in Special Civil Application No. 2861 of 2000 was in occupation of the land in question prior to 1.5.1976 for the limited purpose of offering alternative accommodation to the petitioner. Hence, the matter is required to be remanded to the Corporation for decision afresh after giving the petitioner an opportunity of producing such other and further evidence as may be in possession of the petitioner.

7. As far as the other petitioners are concerned, they have only relied on the typed copies of the receipts purported to have been issued by the Secretary of Ramnagar Co-operative Housing Society Ltd. and they have also relied on the other documents. The Court does not propose to go into this factual aspect at this stage. Since the petitioner in Special Civil Application No. 2861 of 2000 is permitted to produce the independent evidence before the Corporation, the other petitioners are also permitted to produce any independent evidence which may be in their possession before the respondent Corporation to decide whether the petitioners were occupying the land in question prior to 1.5.1976. Accordingly, the petitioners shall submit the applications to the respondents alongwith the evidence in their possession on the aforesaid question by 14.8.2001 and the respondent shall thereafter decide the question by 30.9.2001.

Till the respondent Corporation decides the question, the petitioners shall not be evicted from the land in question because even if the petitioners have no right to occupy the land in question, but since their claim for alternative accommodation is to be examined, they shall not be evicted till their claim is so examined.

8. The petitions are accordingly disposed of in terms of the aforesaid directions.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)

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